

EXHIBIT C

2. FPFC OPINIONS 140

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
Opinion requested by)
Thomas G. Lumsdon,)
Attorney representing)
Richard D. Jones)
)

No. 75-205
September 7, 1976

BY THE COMMISSION: We have been asked the following questions by Thomas G. Lumsdon, an attorney representing Richard D. Jones, Newport Beach, California:

(1) Must an individual cumulate his contributions with those of a closely held corporation in which he is the majority shareholder for the purpose of determining whether the individual and the corporation are a major donor committee pursuant to Government Code Section 82013(c)?

(2) Must an individual cumulate his contributions with those of a corporation of which he is the president for the purpose of determining whether the individual and the corporation are a major donor committee pursuant to Government Code Section 82013(c)?

(3) Must an individual cumulate his contributions with those of a corporation when he is a trustee of a foundation which owns all of the stock of the corporation for the purpose of determining whether the individual and the corporation are a major donor committee pursuant to Government Code Section 82013(c)?

CONCLUSION

(1) When an individual and a closely held corporation in which he is the majority shareholder make contributions of the type described in Government Code Section 82013(c), we generally will assume that they are a "combination of persons" which is attempting to influence the voters for or against the nomination or election of a candidate or the passage or

defeat of a measure. Accordingly, the individual and the corporation ordinarily must file campaign statements as a major donor committee if their combined contributions total \$5,000 or more.

(2) and (3)¹ A corporation and an individual who is both the corporation president and a trustee in a foundation which owns the stock of the corporation need not cumulate contributions for the purpose of determining whether the corporation and the individual are a major donor committee unless there is an agreement or mutual understanding, express or implied, that corporate and personal funds will be contributed toward the accomplishment of a common goal.

ANALYSIS

Richard D. Jones is the president and majority shareholder of R. J. Investments, a closely held California corporation. He also is the president of Northridge Fashion Center ("Northridge") and one of three trustees in the David Gladstone Foundation, which owns all of the stock of Northridge. Mr. Jones has no ownership interest in Northridge. The question before the Commission is whether Mr. Jones, R. J. Investments, and/or Northridge are a "combination of persons" within the meaning of Government Code Section 82013(c)¹ and, therefore, must file campaign statements as a major donor committee if the cumulative amount of the contributions of the three is \$5,000 or more during a calendar year.

Section 82013 provides, in pertinent part:

"Committee" means any person or combination of persons who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure ... if:

...

¹/ All statutory references are to the Government Code unless otherwise noted.

(c) Contributions of cash, checks and other cash equivalents paid directly to candidates and committees total five thousand dollars (\$5,000) or more in a calendar year....

(Emphasis added.)

The term "person" is defined in Section 82047 to mean:

... an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

Accordingly, if Mr. Jones, R. J. Investments, and/or Northridge are a "combination of persons" which make contributions for the purpose of influencing the voters for or against candidates or measures, they will be a committee within the meaning of the Political Reform Act if the requisite amount of contributions are made.^{2/}

One definition of "combination" is:

... an alliance of individuals, corporations, or states united to achieve a social, political, or economic end ... two or more persons working as a team

Websters New Collegiate
Dictionary 164 (7th Ed. 1963).

This definition also comports with the meaning given to this term in numerous court cases. See, e.g., Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 136 (1961); Marino v. U.S., 91 F.2d 691, 693-94 (9th Cir. 1937). We believe that in the context of the Political Reform Act the term was intended to have a similar meaning and, therefore, conclude that "combination of persons," as used in the

^{2/} Mr. Lumsdon informed the Commission staff that Mr. Jones only intends to make contributions of cash or checks to candidates and committees. Thus, Section 82013(b) is inapplicable, and Mr. Jones is a committee, if at all, pursuant to the major donor provisions of Section 82013(c).

definition of "committee," refers to an alliance of persons or entities formed for the purpose of influencing the voters for or against the nomination or election of one or more candidates or the passage or defeat of one or more measures. In addition, we conclude that the necessary alliance can be evidenced by an agreement or mutual understanding which can be implied or expressed.

(1) This standard generally will have to be applied on a case-by-case basis. However, when the relationship in question is that which exists between a majority shareholder and his closely held corporation, we think it is appropriate to assume that the necessary alliance exists.

By definition, a majority shareholder exercises almost complete control over the activities of a closely held corporation. He, for all practical purposes, appoints the board of directors and the officers of the company and they are subject to his ultimate direction in arriving at decisions. If they are not responsive to his desires, he can easily replace them. Accordingly, corporate action generally reflects the judgment and beliefs of the majority shareholder. Moreover, to ignore the nature of the relationship between a majority shareholder and his closely held corporation and treat them as separate entities would have the effect of raising the major donor reporting threshold from \$5,000 to \$10,000 for all such majority shareholders.

We will assume, therefore, that when Mr. Jones and R. J. Investments make contributions they do so pursuant to at least an implicit agreement to accomplish a common political goal and are a "combination of persons" within the meaning of Section 82013. This assumption will be inapplicable only if it is clear from the surrounding circumstances that Mr. Jones and R. J. Investments acted completely independently of each other.

(2) The second question before us is whether Mr. Jones must cumulate the contributions of Northridge and those made by himself and R. J. Investments for the purpose of determining whether the three "persons" are a major donor committee. Section 82013(c). As stated previously, Mr. Jones is the president of Northridge and one of three trustees of a trust which holds all of the stock of Northridge, but he has no ownership interest in Northridge.

Since the president of a corporation, unlike a majority shareholder of a closely held corporation, usually exercises a

more limited degree of control over corporate decision-making,^{3/} we will not assume that the president, acting in his individual capacity, and the corporation are acting with a union of purpose and, therefore, are a combination of persons. The president of a corporation acts subject to the supervision of the board of directors and the ultimate control of the shareholders. He generally is not free to contribute corporate funds according to his own political preferences and thus cannot automatically accomplish a unified goal by combining personal and corporate funds.

We conclude, accordingly, that in the case of a president of a corporation and the corporation itself the obligation to file reports as a committee arises only if there is an agreement or mutual understanding that corporate and personal funds should be contributed toward the accomplishment of a common political goal. We hasten to add, however, that the requisite agreement can be implied as well as express and that a formal manifestation of the agreement is not necessary. Moreover, if in fact Mr. Jones is the dominant influence in determining what contributions should be made by Northridge, the possibility that such an understanding exists is significantly enhanced.

On the other hand, as we have indicated, we will not assume that such an understanding generally exists. Accordingly, Mr. Jones and Northridge need not cumulate their contributions for the purpose of determining whether they are a major donor committee unless pursuant to an agreement, implied or expressed, they acted with a union of purpose to accomplish a common political goal.

In addition, simultaneous service by Mr. Jones as president of Northridge and as a trustee of the Gladstone Foundation does not alter this conclusion. As we discuss below, holding both positions at the same time does not mean that the contributions of Northridge necessarily reflect the political preferences of Mr. Jones.

(3) The David Gladstone Foundation is a charitable trust and Mr. Jones is one of three trustees. The Foundation owns all of the stock in Northridge and, by majority vote of its three trustees, votes the Northridge shares and elects the board of directors. The other two trustees, on the basis of the facts provided to us, do not appear to exercise any control over

^{3/} 1 Sterling-Pearle-Martin-Jennings, California Corporation Laws, Section 81 (4th Ed. 1976).

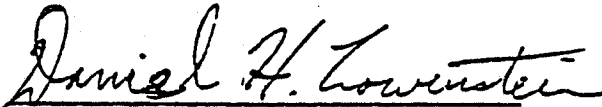
Mr. Jones or to enjoy any special family or business relationship with him. Again, we conclude that these facts, standing alone, do not warrant an assumption that a combination of persons exists when Northridge and Mr. Jones make contributions. Only if there is evidence of an agreement or mutual understanding, express or implied, that the contributions are to be made for a unified purpose will the requisite combination be present.

Since only a majority of the Gladstone Foundation trustees can vote the Northridge stock, Mr. Jones' ability to impose his political judgments on the corporation is limited. He necessarily must obtain the concurrence of at least one other trustee before corporate action will be authorized.

Of course, this does not mean that in reality Mr. Jones' power with respect to campaign contributions is only one vote of three. Perhaps by virtue of his position as president of Northridge and as a trustee, the other trustees defer to his judgment or accord him a great deal of discretion with respect to a wide range of corporate issues and thus, in actuality, he exercises more power than an individual who owns one-third of the shares of a corporation. If this is the case, the possibility of an implied agreement between Mr. Jones and Northridge undoubtedly is enhanced.

It is, however, impossible on the basis of the limited facts before us to reach a definitive conclusion. For purposes of this opinion we, therefore, limit ourselves to enunciation of a standard and leave it to the persons involved to apply that standard.

Approved by the Commission on September 7, 1976.
Concurring: Carpenter, Lowenstein and Quinn. Commissioner Brosnahan concurs in conclusion only. Commissioner Lapan abstained.


Daniel H. Lowenstein
Chairman